IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2581 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DHIRUBHAI SOMANTBHAI BHALIA

Appearance:

MS ROOPAL R PATEL for Appellant

MR MRUGEN K PUROHIT for Respondent No. 1

NOTICE SERVED for Respondent No. 1

UNSERVED-EXPIRED (N) for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 04/03/2003

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. The

appellant has challenged the order passed by the Motor Accident Claims Tribunal, Amreli on an application under Section 140 of the Motor Vehicles Act, 1988. The main petition is still pending. The learned counsel for the appellant submits that the same order may be made as was made in a similar case by the Division Bench in First Appeal No.2573 of 2001 on 13.6.2001.

2. The award under Section 140 is in the nature of an interim award which is subject to adjustment against the final award, which may be passed in the main claim petition being M.A.C.P. No.60/2002, pending before the Motor Accident Claims Tribunal, Amreli. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala reported in 2001 (4) JT 477. Hence, there is no reason to interfere at this stage.

3. However, the learned counsel for the appellant presses the appeal on the ground of interest. It is submitted that the Tribunal ought not to have awarded interest at the rate of 12%. In the circumstances, the appellant shall be liable to pay interest at the rate of 9% and the award of the Tribunal shall stand modified to the said extent.

4. The original claimant shall file an undertaking before the Tribunal within four weeks of the service of this order on the claimant to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

5. On the said undertaking being filed, 50% of the amount awarded, which is permitted to be withdrawn by the claimant under the impugned award, may be withdrawn by him on his furnishing security to the satisfaction of the Tribunal.

6. Subject to the observations and directions hereinabove, the appeal is partly allowed to the aforesaid extent.

(M.C. Patel, J.)

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